

11-1-2016

# State v. Schreiner Appellant's Reply Brief Dckt. 43709

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

## Recommended Citation

"State v. Schreiner Appellant's Reply Brief Dckt. 43709" (2016). *Not Reported*. 2918.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/2918](https://digitalcommons.law.uidaho.edu/not_reported/2918)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NOS. 43709 & 43734
	)	
v.	)	TWIN FALLS COUNTY NOS.
	)	CR 2012-12126 & CR 2013-1281
	)	
DANIELLE NICOLE SCHREINER,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

**REPLY BRIEF OF APPELLANT**

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF TWIN FALLS**

**HONORABLE RANDY J. STOKER  
District Judge**

**ERIC D. FREDERICKSEN  
Interim State Appellate Public Defender  
State of Idaho  
I.S.B. #6555**

**SALLY J. COOLEY  
Deputy State Appellate Public Defender  
I.S.B. #7353  
P.O. Box 2816  
Boise, ID 83701  
(208) 334-2712**

**KENNETH K. JORGENSEN  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534**

**ATTORNEYS FOR  
DEFENDANT-APPELLANT**

**ATTORNEY FOR  
PLAINTIFF-RESPONDENT**

## **TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE.....	1
Nature of the Case .....	1
Statement of Facts and Course of Proceedings .....	2
ISSUES PRESENTED ON APPEAL .....	3
ARGUMENT .....	4
The District Court Violated Ms. Schreiner’s Privacy, Equal Protection, And Due Process Rights Under The Idaho And U.S. Constitutions When It Revoked Her Probation In Order To Keep Her From Becoming Pregnant .....	4
CONCLUSION .....	10
CERTIFICATE OF MAILING .....	11

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Carey v. Population Servs., Int'l</i> , 431 U.S. 678 (1977) .....	6
<i>Doe v. Bolton</i> , 410 U.S. 179 (1973).....	5
<i>Eisenstadt v. Baird</i> , 405 U.S. 438 (1972) .....	5
<i>Griswold v. Connecticut</i> , 381 U.S. 479 (1965) .....	5
<i>Meyer v. State of Nebraska</i> , 262 U.S. 390 (1923).....	5
<i>People v. Zaring</i> , 8 Cal. App. 4th 362 (Cal. Ct. App. 1992) .....	6
<i>Planned Parenthood of Central Missouri v. Danforth</i> , 428 U.S. 52 (1976) .....	6
<i>Rodriguez v. State</i> , 378 So.2d 7 (Fla. Dist. Ct. App. 1979) .....	6
<i>Roe v. Wade</i> , 410 U.S. 113 (1973) .....	5
<i>Skinner v. Oklahoma</i> , 316 U.S. 535 (1942).....	5
<i>Smith v. State</i> , 146 Idaho 822 (2009).....	9
<i>State v. Dabney</i> , 159 Idaho 790 (2016).....	9
<i>State v. Fatland</i> , 882 N.W.2d 123 (Iowa Ct. App. 2016).....	6
<i>State v. Johnson</i> , 152 Idaho 41 (2011) .....	9
<i>State v. Kline</i> , 963 P.2d 697 (Or. Ct. App. 1998).....	7
<i>State v. Livingston</i> , 372 N.E.2d 1335 (Ohio Ct. App. 1976) .....	7
<i>State v. Mosburg</i> , 768 P.2d 313 (Kan. Ct. App. 1989) .....	7
<i>State v. Oakley</i> , 629 N.W.2d 200 (Wis. 2001).....	7
<i>State v. Strand</i> , 137 Idaho 457 (2002) .....	8
<i>Trammell v. State</i> , 751 N.E.2d 283 (Ind. Ct. App. 2001) .....	7
<i>United States v. Consuelo-Gonzalez</i> , 521 F.2d 259 (9th Cir. 1975).....	8

Rules

I.C.R. 35 .....	1,3
-----------------	-----

## STATEMENT OF THE CASE

### Nature of the Case

Pursuant to a plea agreement, Danielle Schreiner pled guilty in one case to grand theft by possession of stolen property and was sentenced to ten years, with five years fixed. Ms. Schreiner, in a separate case, pled guilty to one count of possession of methamphetamine and was sentenced to three years with one year fixed. The district court initially placed Ms. Schreiner on probation in both cases; however, after she admitted a second time that she violated her probation in the two cases, the district court revoked her probation.

On appeal, Ms. Schreiner asserts that the district court deprived her of her constitutional rights to privacy, due process, and equal protection when it revoked her probation, telling her it was incarcerating her in order to prevent her from becoming pregnant.

Additionally, Ms. Schreiner asserts that the district court erred in revoking her probation as her probation violations did not warrant revocation, and further erred in denying her I.C.R. 35 (*hereinafter*, Rule 35) motions for leniency in light of the new or additional information she submitted in support of her motions.

This Reply Brief is necessary to address the State's contention that the district court did not violate Ms. Schreiner's constitutional rights when it incarcerated her in order to prevent her from becoming pregnant.

### Statement of Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Ms. Schreiner's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

## ISSUES

1. In revoking Ms. Schreiner's probation to prevent her from becoming pregnant, did the district court violate Ms. Schreiner's constitutional rights to privacy, due process, and equal protection?
2. Did the district court abuse its discretion in revoking Ms. Schreiner's probation?<sup>1</sup>
3. Did the district court abuse its discretion when it denied Ms. Schreiner's Idaho Criminal Rule 35 Motions in both cases?

---

<sup>1</sup> The issues of Ms. Schreiner's probation revocation and Rule 35 motion were fully briefed in her initial Appellant's Brief; thus, additional argument on these two issues will not be made in this Reply Brief.



## ARGUMENT

### The District Court Violated Ms. Schreiner's Privacy, Equal Protection, And Due Process Rights Under The Idaho And U.S. Constitutions When It Revoked Her Probation In Order To Keep Her From Becoming Pregnant

Danielle Schreiner suffers from drug addiction. (PSI, p.107.) While pregnant and on probation in 2015, Ms. Schreiner admitted that she smoked methamphetamine on two occasions. (10/14/15 Tr., p.5, L.24 – p.6, L.8; R., p.526.) Although her (twin) babies were born healthy, the district court found her actions egregious and revoked her probation. (10/14/15 Tr., p.18, Ls.1-18.) After reviewing the history of Ms. Schreiner's treatment while on probation, the district court told Ms. Schreiner "I find that probation has not served its intended purposes, that the violations in this case are willful. They are particularly willful to me for one reason and one reason alone: Any woman who uses methamphetamine while pregnant does not deserve to live in a free society, as far as I'm concerned. And you discuss that with the court of appeals and the State if you think I'm wrong." (10/14/15 Tr., p.18, Ls.1-7.) Thereafter, the district court revoked her probation, saying it was "not going to take a chance for the next six years that you're going to get pregnant again and use meth and potentially destroy another child's life." (10/14/15 Tr., p.18, Ls.11-13.) Such violated Ms. Schreiner's rights to privacy, equal protection, and due process under the Fourteenth Amendment and Article I, Sections 2 and 13 of the Idaho Constitution because the district court told Ms. Schreiner it was sending her to prison for six years in order to prevent her from becoming pregnant and possibly using methamphetamine while pregnant. Had Ms. Schreiner not been a woman capable of bearing children, she would presumably have been allowed to continue on probation.

The State argues that there is no constitutional violation (Respondent's Brief, pp.15-17), but fails to address Ms. Schreiner's citations to United States Supreme Court authority holding that the right to procreate is constitutionally protected. See Appellant's Brief, pp.7-10 (citing *Roe v. Wade*, 410 U.S. 113, 152 (1973); *Skinner v. Oklahoma*, 316 U.S. 535, 541–542 (1942); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Meyer v. State of Nebraska*, 262 U.S. 390, 399 (1923); *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972)).

The United States Constitution protects an individual's right to procreate. *Roe v. Wade*, 410 U.S. 113 (1973). As the United States Supreme Court said in *Skinner*, “[w]e are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race.” 316 U.S. 535, 541 (1942). Although the Constitution does not explicitly mention a privacy right, the United States Supreme Court has recognized that one facet of the liberty protected by the Due Process Clause is “a right of personal privacy, or a guarantee of certain areas or zones of privacy.” *Roe v. Wade*, 410 U.S. at 152. Included in the right to personal privacy absent unjustified governmental interference are personal decisions relating to procreation and contraception. See *Skinner*, 316 U.S. at 541-42; *Eisenstadt*, 405 U.S. at 453-54 (White, J., concurring in the result).

The United States Supreme Court has held:

The decision whether or not to beget or bear a child is at the very heart of this cluster of constitutionally protected choices. That decision holds a particularly important place in the history of the right of privacy, a right first explicitly recognized in an opinion holding unconstitutional a statute prohibiting the use of contraceptives, *Griswold v. Connecticut*, *supra*, and most prominently vindicated in recent years in the contexts of contraception, *Griswold v. Connecticut*, *supra*; *Eisenstadt v. Baird*, *supra*; and abortion, *Roe v. Wade*, *supra*; *Doe v. Bolton*, 410 U.S. 179, 93 S.Ct.

739, 35 L.Ed.2d 201 (1973); *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976). This is understandable, for in a field that by definition concerns the most intimate of human activities and relationships, decisions whether to accomplish or to prevent conception are among the most private and sensitive.

*Carey v. Population Servs., Int'l*, 431 U.S. 678, 684–85 (1977). That is, when a “decision as fundamental as that whether to bear or beget a child is involved, regulations imposing a burden on it may be justified only by compelling state interests, and must be narrowly drawn to express only those interests.” *Id.* 431 U.S. at 686 (internal citations omitted). Ms. Schreiner has established her constitutionally protected right to procreate.

Ms. Schreiner asserted that the district court violated her constitutional rights by incarcerating her to prevent her from conceiving a child. While it does not appear that this specific issue has previously been addressed in the appellate courts in Idaho, a look at how other courts have dealt with a somewhat similar issue—a probation provision forbidding a probationer from becoming pregnant—may be instructive.

Courts in other jurisdictions have routinely struck provisions in a probation agreement ordering a female defendant not to become pregnant while on probation. See *State v. Fatland*, 882 N.W.2d 123, 126 (Iowa Ct. App. 2016) (holding condition prohibiting probationer from becoming pregnant should be eliminated as it impinges upon her fundamental right to procreation); *People v. Zaring*, 8 Cal. App. 4th 362 (Cal. Ct. App. 1992) (holding a condition prohibiting a defendant from getting pregnant during the term of her probation was unlawful and must be stricken); *Rodriguez v. State*, 378 So.2d 7, 10 (Fla. Dist. Ct. App. 1979) (holding a condition of probation prohibiting defendant from becoming pregnant was invalid because the condition was not

reasonably related to future criminality); *Trammell v. State*, 751 N.E.2d 283, 290–91 (Ind. Ct. App. 2001) (vacating a condition of probation prohibiting defendant from becoming pregnant, finding the condition “excessively impinges upon her privacy right of procreation and serves no discernible rehabilitative purpose”); *State v. Mosburg*, 768 P.2d 313, 315 (Kan. Ct. App. 1989) (finding the probation condition ordering the defendant to refrain from becoming pregnant should be stricken because it unduly intruded upon her right to privacy); *State v. Livingston*, 372 N.E.2d 1335, 1337 (Ohio Ct. App. 1976) (finding a condition prohibiting defendant from having another child during the five-year probationary period was void because it was unconstitutional and an unreasonable burden); *but see State v. Kline*, 963 P.2d 697, 699 (Or. Ct. App. 1998) (finding a condition of probation requiring a defendant to complete drug counseling and anger management treatment before fathering any children should be upheld because it did not impose a total ban on his reproductive rights); *State v. Oakley*, 629 N.W.2d 200, 212–13 (Wis. 2001) (upholding a condition prohibiting a defendant from fathering any more children until he demonstrated he had the ability to support them and was supporting the children he already had, finding the condition was reasonable and not overly broad as it was less restrictive than incarceration).

Where courts across the country have found that imposing as a condition of probation an order against procreating, this Court should find the circumstances in Ms. Schreiner’s case to be even more drastic, and thus unacceptable. Imprisonment of a female in order to prevent procreation strikes at the very heart of a citizen’s liberty interest. Further, probation “[c]onditions that unquestionably restrict otherwise inviolable constitutional rights may properly be subject to special scrutiny to determine whether

the limitation does in fact serve the dual objectives of rehabilitation and public safety.” *United States v. Consuelo-Gonzalez*, 521 F.2d 259, 265 (9th Cir. 1975).

Further, the State claims that the error is not clear from the record; however, the district court specifically told Ms. Schreiner that “for one reason and one reason alone” it found she had willfully violated her probation—because she had used methamphetamine while pregnant. (10/14/15 Tr., p.18, Ls.1-5.) After making additional comments including that Ms. Schreiner did not deserve to live in a free society because she used methamphetamine while pregnant, the court revoked her probation. (10/14/15 Tr., p.18, Ls.4-15.) Thus, absent that finding, Ms. Schreiner presumably would be on probation rather than serving a prison sentence to keep her from procreating.

The State tries, but cannot logically explain how a sentence that attempts to protect the unborn (unconceived) from gestational drug exposure is “rooted in community protection.” (Respondent’s Brief, p.19.) “Community protection” is typically used in the context of protecting the community from danger. “When determining whether the sentence is excessive, we must consider: (1) the protection of society; (2) deterrence of the defendant and others; (3) the possibility of the defendant’s rehabilitation; and (4) punishment or retribution for the defendant.” *State v. Strand*, 137 Idaho 457, 460–61 (2002) (holding court did not abuse its discretion in placing greater emphasis on the need to protect the community where defendant had a history of engaging in forcible sexual contact with underage females). The consideration of whether the district court’s decision serves “community protection” purposes or adequately “protects the community” is, in Idaho, often used in discussing the Sex Offender Registration Act (SORA) and the risk posed by sex offenders.

See, *i.e.*, *State v. Johnson*, 152 Idaho 41 (2011); *Smith v. State*, 146 Idaho 822 (2009). The appellate courts have also used this terminology when discussing the waiver of a juvenile into adult court—whether juvenile facilities would adequately protect the community in light of the defendant’s risk to reoffend and the fact that juvenile facilities mandate release by age 21. See *In Re Doe*, 147 Idaho 243 (2009).

In arguing that the incarceration of Ms. Schreiner was necessary for “community protection” (Respondent’s Brief, pp.16-17), the State relies on the Court’s recent decision in *State v. Dabney*, 159 Idaho 790 (2016), thereby conflating the potential dangerousness of releasing a developmentally disabled defendant convicted of forcibly sodomizing two six-year old boys into the community to reside in an unsecure facility, with the chance that Ms. Schreiner might, in the next six years, get pregnant, use methamphetamine while pregnant, and give birth to a child who had been exposed to methamphetamine in utero.

The State claims that the incarceration of Ms. Schreiner to prevent her from potentially becoming pregnant and potentially using drugs while pregnant advances a “community protection” purpose. (Respondent’s Brief, pp.16-19.) However, the State apparently misunderstands the meaning of “community protection” and the effects of drug use on fetuses. Even if Ms. Schreiner had given birth to a drug-addicted baby (or babies), which she did not, such an infant would not thereafter pose a danger to the community. While it is a sad circumstance when a baby is born who is addicted to controlled substances, the concern is not that of “community protection,” but that the baby will need specific treatment for the first days or weeks of its life.

Further, the State's argument that "the district court was not trying to prevent Schreiner from becoming pregnant" (Respondent's Brief, p.19), but was instead trying to prevent Ms. Schreiner from using meth while pregnant or "harming the unborn" (Respondent's Brief, p.19) is nonsensical as Ms. Schreiner was not pregnant; thus, the State is really arguing in favor of protecting an unconceived fetus from the acts of its non-pregnant mother.

### CONCLUSION

Ms. Schreiner respectfully requests that this Court remand this case with an order that she be placed back on probation or, alternatively, that it remand her case with an order that a new probation violation disposition hearing be held in front of a different district court judge.

DATED this 1<sup>st</sup> day of November, 2016.

\_\_\_\_\_  
/s/  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1<sup>st</sup> day of November, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

DANIELLE NICOLE SCHREINER  
INMATE #107054  
CASSIA COUNTY JAIL (MINI-CASSIA)  
1415 ALBION AVE  
BURLEY ID 83318

RANDY J STOKER  
EMAILED BRIEF

C BRADLEY CALBO  
EMAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL – CRIMINAL DIVISION  
EMAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
MARY ANN LARA  
Administrative Assistant

SJC/mal